

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

ARBITRATION REQUEST No.37 of 2006

APPLICANT:-

M/S. BOSS PROFILES LIMITED,
CORPORATE AND REGISTERED OFFICE AT "SDV ARCADE",
AB-5, 2ND AVENUE, ANNA NAGAR, CHENNAI-600 040,
REPRESENTED BY ITS DIRECTOR SRI.SHAIKH AKHTAR ALI.

BY ADV. SRI.JOSEPH MARKOSE
SRI.JOSEPH KODIANTHARA

RESPONDENT: OPPOSITE PARTY:-

M/S. GLOBAL TRADE POINT,
NO.63/1079, POWER HOUSE EXTENSION ROAD,
NEAR ESI HOSPITAL, ERNAKULAM NORTH,
COCHIN-18.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD
ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

V.K.Bali,C.J.

Arbitration Request No.37 of 2006

Dated, this the 6th day of December, 2006

ORDER

V.K.Bali,C.J. (Oral)

The prayer in this application filed under Section 11 of the Arbitration and Conciliation Act, 1996 is for appointment of an Arbitrator. It is the case of the applicant that he entered into an agreement of dealership dated 26.11.2002 with the opposite party for setting up a dealership for the products of the applicant in Cochin. Based on the aforesaid agreement, the applicant supplied products to the opposite party. A sum of Rs.9,36,754/- is due from the opposite party as on 14.11.2005. By repeated letters, the applicant had requested the opposite party to pay the outstanding amount due to the applicant. As per Clause 23 of the dealership agreement dated 26.11.2002, disputes arising out of the aforesaid agreement have to be resolved by arbitration. The applicant by its letter dated 8.4.2006 nominated Mr.N.Sukumaran, Retired District Judge and Advocate, Warriam Road, Kochi as Arbitrator to decide upon the claim of the applicant and called upon the opposite party through their

advocate to accept their proposal for arbitration within thirty days. The opposite party has failed to comply with the request for reference of the claim to arbitration. Thus, the application for appointment of Arbitrator.

2. Pursuant to notice issued by this Court, respondent has filed his reply, paragraph 4 whereof reads as follows:

“Annexure A1 agreement was executed on 26.11.2002. It was effective only for two years from the date of signing of the Agreement. The validity of the Agreement has been terminated by efflux of time and no arbitration proceedings can be initiated on the basis of the said Agreement. The amounts claimed by the applicant is without any basis. Respondent has stated the true facts in Annexure A3 reply”.

3. The only objection raised by the counsel for the respondent is that agreement Annexure A1 was effective only for a period of two years and since there is no agreement in existence now, no clause pertaining to appointment of Arbitrator also exists. This is refuted by the learned counsel for the applicant, who states that the dispute pertains for a period when

the agreement was in existence.

4. Be that as it may, once there is an arbitration clause, the matter has to be referred to the Arbitrator leaving, of course, the right of the respondent to raise the points urged in the present Arbitration Request or any other, which, surely, the Arbitrator should decide. Leaving that right open to the respondent, the application is allowed and the matter is referred to Arbitrator. By consent of parties, Sri.K.Ramachandran, Retired District Judge, residing at "Govind", Neduveli Lane, Kochi-16 is appointed as sole Arbitrator, who will give the award in accordance with law and also would determine the points raised in the present lis, mention whereof has been made above.

The application is disposed of as indicated above.

V.K.Bali
Chief Justice

vku/-